

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4187 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

HIRA ALIAS HARISH MANSUR VANKAR

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MS PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 02/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 12th November, 1998, made by the Commissioner of Police, Ahmedabad City, under the powers

conferred upon him under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

It is alleged that the petitioner is a 'bootlegger' within the meaning of section 2 (b) of the Act, and his activities are prejudicial to the maintenance of public order within the meaning of section 3 (4) of the Act. Three offences punishable under the Bombay Prohibition Act are registered against the petitioner. In each of the said offences, the petitioner was found to be in possession of substantial quantity of country liquor. Two of the offences are still pending investigation.

It is submitted that under representation dated 10th May, 1999, the petitioner had requested for copies of the reports of the FSL in respect of the liquor seized from the possession of the petitioner. The said reports have not been furnished to the petitioner. The reports of the Chemical Analyst are vital documents, without which the petitioner could not have made an effective representation. The petitioner's Constitutional right has thus been infringed. The averment is not controverted.

In the matter of RANVIRSINH KALYANSINH (Special Civil Application No. 7490/98, decided on 12th July, 1999), I have taken a view that whether the Detaining Authority relies upon the report of the Forensic Science Laboratory/Chemical Analyst or not, the same is a vital document without which the detenu may not be able to make any effective representative. It is therefore imperative for the Detaining Authority to furnish a copy of the said report to the detenu except in cases where such reports are not yet received or not prepared. In the present case, it is not the case of Detaining Authority that on the date of detention, such reports were yet not available. Besides, even after the petitioner's demand vide his representation dated 10th May, 1999, such reports are not furnished to the petitioner. The petitioner's right to make an effective representation having thus been infringed, the continued detention of the petitioner is unwarranted.

Petition is, therefore, allowed. The impugned order dated 12th November, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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JOSHI*